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Doc#: 0507439008  
Eugene "Gene" Moore Fee: \$38.50  
Cook County Recorder of Deeds  
Date: 03/15/2005 08:57 AM Pg: 1 of 8

## ASSIGNMENT OF RENTS AND LEASES

This Assignment made this 28<sup>th</sup> day of January, 2005, by **BRIAN MARQUEZ aka ISRAEL BRIAN MARQUEZ** and **KRISTINE D. MARQUEZ**, his wife, in joint tenancy (the "Assignor") to **FIFTH THIRD BANK**, a Michigan banking corporation, for itself and as agent for any affiliate of Fifth Third Bancorp (the "Assignee").

WHEREAS, KDM Management Company, an Illinois corporation (the "Borrower") is indebted to Assignee pursuant to the Promissory Note executed by Borrower in the aggregate principal amount of \$995,000.00, dated of even date herewith (the "Note");

WHEREAS, Assignor is indebted to Assignee by virtue of each Unconditional Guarantee, dated of even date herewith, for the benefit of Assignee (as the same may be amended, modified or restated from time to time, collectively, the "Guaranty")

WHEREAS, Assignor has executed and delivered to Assignee an Open-End Mortgage, dated of even date herewith (the "Mortgage") on the Property (as defined below), (the Note, the Guaranty, the Mortgage and all documents executed in connection therewith will be referred to herein as the "Loan Documents");

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby agrees, promises and undertakes as follows:

Without limiting the generality of the foregoing, Assignor agrees as follows:

1. (a) Assignor grants, transfers, and assigns and sets over to Assignee all right, title and interest in and to, all rents, issues, profits and privileges (now due or which may hereafter become due) of, (a) the real estate located in Cook County, Illinois as described in Exhibit "A" attached hereto and made a part hereof, and all improvements at any time constructed thereon or any personal property or fixtures at any time installed or used therein (collectively, the "Property"), (b) all leases now or hereafter existing on all or any part of the Property, whether written or oral, or any letting or any agreement for the use or occupancy of any part of the Property which may heretofore have been or which may hereafter be made or agreed to between Assignor or any other present, prior, or subsequent owner of the Property, or any interest therein, or which may be made or agreed to by Assignee, its successors or assigns, under the powers herein granted and any tenant or occupant of all or any part of the Property (the "Leases and each, a "Lease"), including without limitation any Leases existing as of the date of this Assignment and described in Exhibit "B" attached hereto and made a part hereof (the "Existing Leases"), and (c) all proceeds of the foregoing, all for the purpose of securing the prompt payment, performance and discharge, when due, of the following described obligations (hereinafter, the "Indebtedness") and all whether accruing before or after any foreclosure action with respect to the Property or during any appeal or redemption period.

(b) Each and every term, provision, obligation, covenant and agreement of Assignor set forth in, the

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Loan Documents, all mortgages, security agreements, instruments and documents securing the Loan Documents and all other documents delivered or required, as a condition to the making of the loan evidenced thereby, all of which are held by or for the benefit of Assignee; and

(c) all loans, advances, indebtedness and each and every other obligation or liability of Assignor owed to Assignee or any affiliate of Fifth Third Bancorp, however created, of every kind and description, whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, due or to become due, liquidated or unliquidated, matured or unmatured, participated in whole or in part, created by trust agreement, lease, overdraft, agreement, or otherwise, whether or not secured by additional collateral, whether originated with Assignee or owed to others and acquired by Assignee by purchase, assignment or otherwise, and including, without limitation, all loans, advances, indebtedness and every obligation arising under the Loan Documents and obligations to perform or forbear from performing acts, any and all Rate Management Obligations (as defined in the Loan Documents), all amounts represented by letters of credit now or hereafter issued by Assignee or any affiliate of Fifth Third Bancorp for the benefit of or at the request of Assignor and/or Borrower, all agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications, and restatements thereof, and all expenses and attorneys' fees incurred or other sums disbursed by Assignee or any affiliate of Fifth Third Bancorp under this Mortgage or any other document, instrument or agreement related to any of the foregoing.

2. Assignor represents that (a) except for the Existing Leases, there are no leases, subleases or agreements to lease (as lessor or lessee) or sublease (as sublessor or sublessee) all of or any part of the Property; (b) Assignor is entitled to receive all the rents, issues and profits and to enjoy all the rents and benefits mentioned herein and assigned hereby, and the same have not been sold, assigned, transferred or set over by an instrument now in force and will not at any time during the life of these presents, be sold, assigned, transferred or set over by Assignor or any other person or persons taking under or through Assignor except subject to this Assignment; and (c) Assignor has the sole right to sell, assign, transfer, and set over the same and to grant and confer upon Assignee the rights, interest, powers and/or authorities herein granted and conferred.

3. Assignor will from time to time execute any and all instruments reasonably requested by Assignee in order to effectuate this Assignment and to accomplish any of the purposes that are necessary or appropriate in connection with this Assignment or the Property.

4. This Assignment shall in no way operate to restrict or prevent Assignee for using any remedy which it may now or hereafter have because of any present or future breach of the terms or conditions of the Loan Documents.

5. Assignee shall not in any way be responsible for any failure to do any or all of the things for which the rights, interests, power, and/or authority are herein granted; and Assignee shall not be responsible for or liable under any of the agreements undertaken or obligations imposed upon the Assignor as lessor under Lease or other agreements with respect to the Property.

6. Assignee shall be accountable only for the amounts, if any, actually received by it under the terms of this Assignment.

7. Assignee's failure to do any of the things or exercise any of the rights, interests, powers and/or authority granted hereunder shall not be construed as a waiver of any of the rights, interests, powers or authorities assigned and granted to Assignee under this instruments.

8. Assignee may assign this Assignment and the rights accruing hereunder to any subsequent assignee and holder of the Loan Documents for which this Assignment is given as additional security.

9. The parties agree that this Assignment is an actual assignment effective as of the date hereof, and that

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upon demand made by Assignee on the lessor or lessee under any Leases or on any person liable for any of the rents, issues, and profits of and from the Property or any part thereof, such lessor or lessee or person liable for any of such rents, issues and profits shall, and is hereby authorized and directed to pay to or upon Assignee's order, and without any inquiry of any nature, all rents and other payments then or thereafter accruing under the leases or any other instrument or agreement, oral or written, granting rights to, and creating an obligation to pay rents, issues, or profits in connection with the Property.

10. As long as Assignor is not in default in the payment of any Indebtedness secured hereby or in the performance of any obligation, covenant, or agreement contained herein or in the Loan Documents, Assignee agrees not to demand from any lessor or lessee under the issues or profits hereby assigned, but shall permit Assignor to leases, collect all such rents, issues and profits from the property and the Leases on but not prior to accrual, and Assignor shall apply the same (i) to the payment of taxes and assessments upon the Property before penalty or interest is due thereon, (ii) to the cost of such insurance and of such maintenance and repairs as are required by the terms of the Loan Documents, and (iii) to the payment of principal, premium (if any) and interest becoming due on the Note(s), before using any part of the same for any other purposes; provided, however, that notwithstanding the provisions of this section, all lessors and lessees under the Leases and all persons liable for rents, issues and profits of and from the property shall comply with any demands for rents made by Assignee pursuant to the provisions of this Assignment without reference to whether or not the same is made in accordance with this section.

11. Upon or at any time after default in the payment of any Indebtedness evidenced by the Loan Documents, or in the performance of any term, provision, condition, obligation, covenant, or agreement contained herein or after the occurrence of an Event of Default pursuant to the terms of the Loan Documents, and after the expiration of any period of grace, if any, with respect to any such default provided for in the Loan Documents, Assignee may declare all sums secured hereby immediately due and payable and may, at Assignee's option, without notice, either in Assignee's person or by agent and with or without bringing any action or proceeding, or by any receiver to be appointed by a court, enter upon, take possession of, and manage and operate the Property and each and every part thereof, and in connection therewith, Assignee may make, enforce, and modify Leases; (including the Existing Leases) fix or modify rents; repair, maintain, and improve the Property; employ a contractor, subcontractors, and workmen in and about the Property; obtain and evict tenants; in its own name, sue for or otherwise collect or reserve any and all rents, issues and profits, including those past due and unpaid; employ leasing agents, managing agents, attorneys and accountants in connection with the enforcement of Assignee's rights hereunder and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which assignee may deem necessary and appropriate in and about the Property for the protection thereof and of Assignee's rights hereunder or under the Loan Documents or under any other instrument or agreement related to the Indebtedness, and any and all rents, issues and profits, including those past due and unpaid; in connection with the enforcement of Assignee's rights hereunder and pay the reasonable fees and expenses thereof; and otherwise do and perform any and all acts which Assignee may deem necessary and appropriate in and about the Property for the protection thereof and of Assignee's rights hereunder or under the Loan Documents or under any other instrument or agreement related to the Indebtedness, and any and all amounts expended by Assignee in connection with the foregoing shall constitute so much additional indebtedness secured hereby. Assignee shall apply any monies collected by Assignee, as aforesaid, less costs and expenses incurred, as aforesaid, upon any Indebtedness secured hereby in such order and manner as Assignee may determine. The entering upon and taking possession of the Property; the collection of rents, issues, and profits; the exercise of any rights hereinabove specified, and the application of collections, as aforesaid, shall not cure, waive, modify or affect any default hereunder or under the Loan Documents.

12. All tenants or occupants of any part of the Property (including without limitation, all persons claiming any interest as lessor or lessee under any Leases or Existing Leases) are hereby authorized to recognize the claims and demands of Assignee without investigation as to the reason for any action taken Assignee or the validity or the amount of indebtedness owing to or the existence of any default hereunder or under the Loan Documents, or the application to be made by Assignee, of any amounts to be paid to Assignee.

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13. Assignor shall perform all of its obligations as lessor or lessee under any Leases, and shall give prompt notice to Assignee of any notice of default by Assignor under any lease, together with a complete copy of any such notice. Assignor shall enforce the performance and observance of each and every covenant of the lessor's or lessees' under the Leases.

14. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under any Leases, nor shall this Assignment operate to place upon Assignee responsibility for the control, operation, management, or repair of the Property or the carrying out of any of the terms and conditions of any Leases; nor shall this Assignment operate to make Assignee liable for any waste committed on the Property by the lessor or lessee under any Lease or committed by any other party, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property, resulting in loss, injury or death to any tenant, licensee, employee, invitee or stranger.

15. Assignor shall, and does hereby agree to, indemnify and hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under any leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of discharge any of the terms, covenants, or agreements contained in any of the leases, except for liability, loss or damage and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any of the terms, covenants, or agreements contained in any of the Leases, except for liability, loss or damage and all authorized representatives under Paragraph 11 hereof. Should Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorney's fees, shall be secured hereby, Assignor shall reimburse Assignee therefor immediately upon demand, and upon Assignor's failure to do so, Assignee may declare all such sums immediately due and payable.

16. Assignor has not and will not accept rent in advance under any Leases except only monthly rents for current months which may be paid in advance.

17. Assignor shall cause this Assignment to be recorded and filed and rerecorded and refiled in each and every public office in which said filing and recording may be necessary to constitute record of notice of this Assignment and the terms and provisions hereof as applicable to the Property, and assignee shall execute and deliver all such documents as may be reasonably required to evidence the same.

18. Upon payment in full of all Indebtedness (as defined in the Loan Documents) and on the performance of all the Obligations secured hereby, this Assignment shall become null and void and of no effect.

19. This Assignment is binding on and inures to the benefit of the parties hereto, their heirs, legatees, devisee, administrators, executors, successors and assigns. The term "Assignor", as used herein, shall include each Assignor whose name appears below severally and all such Assignors, jointly and severally and their respective heirs, legatees, devisee, executors, successors and assigns. The term "Assignee," as used herein, shall include the named Assignee and all such Assignee's successors and assigns, including each and every person or entity who or which, from time to time, becomes owner and holder of the Loan Documents, and such successors and assigns shall have, hold and enjoy all of the rights, powers, and benefits hereby afforded and conferred upon the named Assignee as fully and with the same effect as if such successors and assigns were by name herein designated as Assignee.

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IN WITNESS WHEREOF, Assignor has executed this Assignment as of the first above written.

ASSIGNOR:

*[Signature]*  
 Brian Marquez aka Israel Brian Marquez  
*Kristine D. Marquez*  
 Kristine D. Marquez

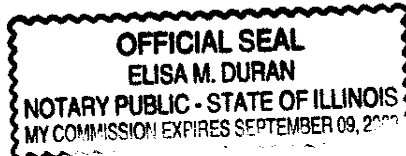
ASSIGNEE:

FIFTH THIRD BANK

By: *[Signature]*  
 Print Name: CHRISTIAN SACCA  
 Its: AVP

STATE OF ILLINOIS )  
 )  
 COUNTY OF Cook )

SS:



The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2005, by Brian Marquez aka Israel Brian Marquez, an individual who acknowledged the execution of the foregoing to be his voluntary act and deed.

*[Signature]*  
 Notary Public  
 My Commission Expires: 1/4/08

STATE OF ILLINOIS )  
 )  
 COUNTY OF Cook )

SS:



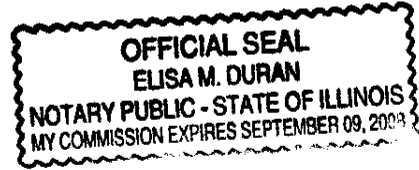
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2005, by Kristine D. Marquez, an individual who acknowledged the execution of the foregoing to be her voluntary act and deed.

*[Signature]*  
 Notary Public  
 My Commission Expires: 1/4/08

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STATE OF ILLINOIS )  
 )  
COUNTY OF Cook )

SS:



The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2005 by Christian Sacamene  
the AVP of Fifth Third Bank, a Michigan banking corporation on behalf of such corporation.

Elisa M. Duran

Notary Public

My Commission Expires: 9/9/08

This instrument prepared by:  
Statman, Harris, Siegel, & Eyrich  
2900 Chemed Center  
255 E. Fifth Street  
Cincinnati, Ohio 45202  
(513) 621-2666

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## **EXHIBIT A**

The Property

THE WEST 50 FEET OF THE EAST 75 FEET OF LOT 8 IN THE RESUBDIVISION OF LOTS 1 AND 2 IN WOODBURY'S ADDITION TO BLUE ISLAND, BEING THE SOUTH  $\frac{1}{4}$  OF THE SOUTH EAST  $\frac{1}{4}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF THE NORTHEAST  $\frac{1}{4}$  OF SECTION 36, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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## **EXHIBIT B**

All present and future leases entered into by and between Assignor and any and all lessees.

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